IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6153 of 2000

with

SPECIAL CIVIL APPLICATION No 6147 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

BANUBHA CHANDUBHA

Appearance:

MR RV DESAI ASSTT GOVERNMENT PLEADER for Petitioner

MR DA SURANI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/09/2000

C.A.V. JUDGEMENT

1. Both these petitions seek to challenge the common award of the Labour Court, Surendranagar whereby Reference No.246/91 and Reference No.173/92 in respect of the respective respondents in these petitions have been allowed and they are ordered to be reinstated with 20% backwages for certain periods. It is submitted on behalf of the petitioners that, according to the statement of claim of the respondent in Special Civil Application No.6153 of 2000, he had worked under the petitioner as a daily-rated labourer in the years 1986 to 1988 and he was discharged from service from 1.10.1988. After consolidation of six Reference cases of similar nature, the respondent in Special Civil Application No.6147 of 2000 only was examined on oath before the Labour Court. He has deposed that he had worked as a casual labourer on daily-wage basis for about ten years and the petitioner had discharged the workmen on 1.3.1992 without any notice or payment of compensation. The witness of the petitioner deposed that the workmen concerned were called for work since 1986 for the seasonal activity and such employment had continued upto 1.2.1992, but the workmen had abandoned the job in the meantime and that they had not worked under the petitioner on continuous basis. It is also deposed that some of the workmen had completed 240 days of work in 1986 or 1987.

2. Appreciating the evidence on record, the Labour Court has found that Banubha, the respondent in Special Civil Application No.6153 of 2000, had lastly worked for 105 days in 1988. Thereafter, the petitioner had called upon 15 workmen to report for duty and entrusted them some work from 1.8.1992 to 15.8.1992 and from 16.8.1992 to 31.8.1992. Accordingly, it is believed that the respondent was again relieved from 31.8.1992. Taking 1.10.1988 as the first date of termination and holding the date of 31.8.1992 after only one month's service to be the second date of termination, the Labour Court has awarded reinstatement with 20% backwages in view of the nature of employment. As for the second respondent, i.e. Amarshibhai, the finding is that he had continuously served in the years 1982 to 1985-86 and thereafter lastly he had worked for 13 days from 16.2.1992 to 29.2.1992. In this context, it has to be noted that in the only oral testimony on behalf of the workmen, Amarshibhai had stated that they were illegally discharged from service from 1.3.1992. Even in this background of facts on record, the Labour Court has recorded a finding of fact that the alleged termination of service of the workmen was illegal and that they had completed 240 days of service.

3. As seen hereinabove, the respondents have by no stretch completed 240 days of service in the year preceding the alleged date of termination. Even the date of termination of service as alleged in the deposition of one of the respondents is obviously incorrect. The first respondent, i.e. Banubha, has admittedly lastly served from 2.8.1992 to 31.8.1992 and, therefore, he could not have been discharged on 1.3.1992. Similarly, the second respondent, i.e. Amarshibhai, worked only for 13 days between 16.2.1992 and 29.2.1992. Therefore, it clearly appears that they had raised the industrial dispute on the basis of fictitious date of termination of service. The services put in by the respondents in the years 1982 to 1985-86 or upto 1988 were irrelevant and there was no evidence as to whether at the end of their earlier services, the respondents were illegally discharged or they had abandoned the job. In absence of a finding that the respondents continued in service in fact or in the eye of law, it cannot be inferred that the later services were not by way of fresh employment which admittedly did not last for 240 days. Therefore, the impugned award based on the finding of fact that the respondents had completed 240 days of service, disregarding the admitted fact that they had not completed such service in the year preceding the date of termination cannot be sustained. In this view of the matter, the impugned award is perverse and illegal, and the relief granted by the Labour Court is totally unjustified in the facts and circumstances of the case.

4. Under the circumstances and for the reasons discussed hereinabove, both the petitions are allowed and the common award impugned in both the petitions, as far it concerns the respondents, is quashed and set aside. Rule in both the petitions is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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